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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

VICKY SILVA, a consumer
residing in Oregon, individually
and on behalf of all others
similarly situated,

Plaintiff,

v.

**UNIQUE BEVERAGE
COMPANY, LLC**, a foreign
corporation,

Defendant.

Case No. 3:17-cv-00391-HZ

**MOTION FOR LEAVE TO
FILE A SHORT SUR-REPLY**

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LR 7-1(a) CERTIFICATION

In compliance with LR 7-1(a), I made a good faith effort to resolve this dispute by calling and emailing opposing counsel and defendant opposes this motion. Fuller decl. ¶ 5; Exhibit 8.

MOTION

Under this Court's inherent authority, plaintiff respectfully moves for an order granting her leave to file a short 2-page sur-reply because defendant's reply argues for the first time that plaintiff is guilty of fabricating facts pertaining to her amended complaint's reference to an incorrect picture of the label at issue in this case. Should this Court decide a short explanation would be helpful, plaintiff would like the opportunity to provide one.

FACTUAL BACKGROUND

For the first time in its reply, defendant alleges that plaintiff is guilty of fabricating facts pertaining to her amended complaint's reference to an incorrect picture of the label at issue in this case. Doc. #7, pg. 7. Upon further inspection, plaintiff agrees that the correct label at issue in this case is the label included in defendant's request for judicial notice at Doc. #30. In her sur-reply, plaintiff intends to very briefly explain why the amended complaint and response to defendant's

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motion reference a slightly incongruous picture, and intends to request that the Court strike or disregard the demonstrative picture of the label in her amended complaint, and Exhibit 1 attached to the complaint, and references to “with juice” in her response at pages 10, 33, 38, and 40.

MEMORANDUM

Courts may permit sur-replies for compelling reasons, including new arguments raised in reply briefs. *See, e.g., Knebel v. St. Helens Cmty. Fed. Credit Union*, No. 3:13-cv-00208-HZ, 2013 US Dist LEXIS 71198, at *9 (D Or May 20, 2013) (denying motion for leave to file a sur-reply in part because no compelling reason existed and no new arguments were raised in the reply brief).

ARGUMENT

Though plaintiff’s reference to an incorrect label should not substantively affect this Court’s ruling on defendant’s motion to dismiss, given defendant’s allegations that plaintiff was and is somehow trying to mislead the Court to gain some sort of unfair advantage, plaintiff respectfully requests leave to file a short 2-page sur-reply to set the record straight. See Doc. #7, pg. 7; Exhibit 8.

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CONCLUSION

Only if the Court decides a short sur-reply would be helpful under these circumstances, plaintiff respectfully requests leave to file one.

August 24, 2017

RESPECTFULLY FILED,

s/ Michael Fuller

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CERTIFICATE OF SERVICE

I certify that I served this document and all attachments on the following by first class regular and certified mail, return receipt requested, postage pre-paid, and by ECF to:

**Unique Beverage Company, LLC
c/o Hochman Legal Group PLLC
Attn.: Joe Hochman
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Joe@hlglaw.com**

August 24, 2017

s/ Michael Fuller
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